

Message Text

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ACTION STR-07

INFO OCT-01 EUR-12 EA-10 IO-13 ISO-00 STRE-00 AF-10
ARA-10 NEA-10 AGRE-00 CEA-01 CIAE-00 DODE-00
EB-08 FRB-03 H-01 INR-10 INT-05 L-03 LAB-04
NSAE-00 NSC-05 PA-01 CTME-00 AID-05 SS-15 ITC-01
TRSE-00 ICA-11 SP-02 SOE-02 OMB-01 DOE-15 COM-02
OIC-02 DOEE-00 /170 W
-----041261 070753Z /17

P 070647Z JUL 78
FM AMEMBASSY SEOUL
TO SECSTATE WASHDC PRIORITY 2117
INFO AMEMBASSY PARIS PRIORITY
USMISSION GENEVA PRIORITY

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PASS STR ELECTRONICALLY; FOR HATHAWAY, GC'S OFFICE

GENEVA FOR MTN

PARIS FOR OECD

E.O. 11652: N/A
TAGS: ETRD GATT MTN
SUBJ: FINAL NEGOTIATING PHASE OF THE MTN AND COMMERCIAL
COUNTERFEITING

REF: A. STATE 166349, B. STATE 167575

1. EMBASSY MADE STRONG PRESENTATION REQUESTED REFTEL (A)
ON JUNE 30 TO MINISTRY OF FOREIGN AFFAIRS (MOFA) AND MINISTRY
OF COMMERCE AND INDUSTRY (MCI) AND MTN TASK FORCE MEMBERS
TO URGE THAT ROK DELEGATION BE PREPARED TO RESPOND TO U.S.
TRADE POLICY REVIEW GROUP AUTHORITY TO MAKE FINAL DECISIONS
AT GENEVA. ASSISTANT MINISTER KIM SUN KIL OF MCI EXPRESSED
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THE VIEW THAT INSTRUCTIONS BEING FORWARDED REFTEL WILL
PROBABLY ALLOW IT TO MAKE FINAL DECISIONS ALTHOUGH THERE
WOULD UNDOUBTEDLY BE SOME QUESTIONS ON WHICH IT WOULD HAVE
TO SEEK SEOUL'S APPROVAL.

2. ON JULY 6 EMBOFFS PRESENTED PRINCIPLES OF AGREEMENT ON
COMMERCIAL COUNTERFEITING TO MOFA AUTHORITIES WITH A REQUEST

FOR THEIR SUPPORT AT GENEVA. MOFA OFFICIALS RECOGNIZED THAT ROK CUSTOMS LAW DOES PROVIDE FOR SEIZURE OF COUNTERFEITED MERCHANDISE AND THEY WOULD INQUIRE WHETHER FORFEITURE WAS ALSO EMBODIED IN THE CURRENT CUSTOMS LAWS AND REGULATIONS.

3. RELATED KOREAN LAW DOES INDEED PROVIDE FOR FORFEITURE AS WELL AS SEIZURE OF COUNTERFEITED MERCHANDISE AND IS QUITE DEFINITIVE ON THE CRIMINAL ASPECTS OF SUCH ACTIVITIES. CHAPTER 4, ARTICLE 35 OF THE KOREAN TRADEMARK LAW PERMITS HOLDERS OF REGISTERED TRADEMARK RIGHTS TO DEMAND THE DESTRUCTION OF "THE THING WHICH CAUSED AN ACT OF INFRINGEMENT, REMOVAL OF THE EQUIPMENT USED FOR THE ACT OF INFRINGEMENT OR ANY ACTION NECESSARY FOR PREVENTION OF OTHER INFRINGEMENTS." CHAPTER 8, ARTICLE 60 OF THE SAME LAW CONTAINS PUNITIVE PROVISIONS FOR PERSONS WHO INFRINGE UPON TRADEMARKS. PUNISHMENT SHALL BE BY IMPRISONMENT NOT EXCEEDING FIVE YEARS OR BY FINE NOT EXCEEDING 500,000 WON. THERE ARE NO OTHER PROVISIONS IN THE TRADEMARK LAW REGARDING SEIZURE OR FORFEITURE.

4. WHILE NOT RELATED TO THE TRADEMARK LAW, THE KOREAN CUSTOMS ACT AND CRIMINAL CODE ALSO CONTAIN PROVISIONS FOR SEIZURE AND FORFEITURE OF GOODS. THE PUNITIVE MEASURES CONTAINED IN CHAPTER 9 OF THE KOREAN CUSTOMS ACT CONTAIN NUMEROUS PROVISIONS FOR FORFEITURE OF GOODS. THE PENALTIES FOR EXPORTING OR IMPORTING PROHIBITED GOODS (ARTICLE 179), LIMITED OFFICIAL USE

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FOR EVADING CUSTOMS DUTY (ARTICLE 180), FOR IMPORTING OR EXPORTING WITHOUT LICENSE (ARTICLE 181), AND FOR ACQUIRING SMUGGLED GOODS (ARTICLE 186), ALL INCLUDE FORFEITURE OF THE GOODS IN QUESTION. WHEN GOODS SUBJECT TO FORFEITURE UNDER THESE ARTICLES CANNOT BE FORFEITED IN WHOLE OR IN PART, THE MONETARY EQUIVALENT TO THE DOMESTIC WHOLESALE PRICE OF THE GOODS AT THE TIME OF OFFENSE MAY BE COLLECTED FROM THE OFFENDER (ARTICLE 198). MOREOVER, TRANSPORTATION FACILITIES USED EXCLUSIVELY FOR COMMITTING THE OFFENSES UNDER ARTICLES 179 THROUGH 181 AND "GOODS FURNISHED FOR THE COMMITMENT" OF THE SAME CRIMES MAY ALSO BE FORFEITED (ARTICLES 183 AND 185).

5. CHAPTER 3 OF THE KOREAN CRIMINAL CODE DEFINES "CONFISCATION" AS ONE TYPE OF PUNISHMENT. (SECTION 1, ARTICLE 41.) ARTICLE 48 OF THE SAME SECTION NOTES IN PART THAT "A THING WHICH IS NOT THE PROPERTY OF A PERSON OTHER THAN THE CRIMINAL, OR WHICH WAS ACQUIRED BY A PERSON OTHER THAN THE CRIMINAL WITH THE KNOWLEDGE OF ITS NATURE AFTER COMMISSION OF THE CRIME, MAY BE CONFISCATED" IF CERTAIN CONDITIONS ARE MET INCLUDING THE USE OF THE ITEM OR ITS ACQUISITION THROUGH CRIMINAL CONDUCT.

6. CHAPTER 10 OF THE CRIMINAL CODE PROVIDES INSTANCES IN WHICH ITEMS MAY BE SEIZED. A COURT MAY SEIZE ARTICLES TO BE USED AS EVIDENCE (ARTICLE 106), MAIL OR TELEGRAMS IN THE POSSESSION OF GOVERNMENT AUTHORITIES SENT BY AN ACCUSED PERSON (ARTICLE 107), AND ARTICLES VOLUNTARILY PRODUCED BY THEIR OWNER (ARTICLE 108).

7. UNDER ARTICLE 212 OF THE CUSTOMS ACT, A WRIT ISSUED BY A DISTRICT JUDGE MUST BE OBTAINED BEFORE ANY SEARCH OR SEIZURE IS TO BE UNDERTAKEN. A POST FACTO WRIT MAY BE OBTAINED IN AN EMERGENCY. GOODS EITHER SUBMITTED VOLUNTARILY OR LEFT BEHIND BY AN OWNER MAY BE SEIZED WITHOUT A WRIT. UNDER ARTICLE 219 OF THE CUSTOMS ACT, A CUSTOMS OFFICIAL MAY LIMITED OFFICIAL USE

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SEIZE GOODS IN THE COURSE OF AN INVESTIGATION IF THE GOODS ARE SUFFICIENT TO PROVE THE FACTSWUF AN OFFENSE OR ARE DEEMED SUBJECT TO FORFEITURE.

8. ACCORDING TO THE INTERNATIONAL LEGAL AFFAIRS DIVISION OF THE OFFICE OF PATENTS, THERE HAVE BEEN THREE TRADEMARK DISPUTES BROUGHT TO THEIR ATTENTION SINCE 1976. NONE OF THE DISPUTES HAVE INVOLVED SEIZURE OR FORFEITURE OF GOODS. STERN

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